

Appl. No. 10/017,894  
Amdt. dated December 22, 2005  
Reply to Office Action of September 2, 2005

### **Remarks**

Claims 2-6 and 9-22 are pending in the instant application. Claims 3-6, 11-14 and 18-21 have been withdrawn from consideration; however, Applicants reserve the right to seek patent protection for the subject matter of claims 3-6, 11-14, and 18-21 by divisional application.

In the Office Action mailed September 2, 2005, the Examiner objects to the drawings, the abstract and the disclosure. The Examiner rejects claims 2, 9, 10, 15-17 and 22 under 35 U.S.C. §§ 102(b), 103(a) and §112, 2<sup>nd</sup> paragraph. Based on the amendments and remarks made herein, Applicants respectfully request that the objections and rejections be withdrawn and that the application be passed to allowance.

#### **1. Response to Paragraph 3 of the Office Action mailed September 2, 2005**

In the Office Action mailed September 2, 2005, the Examiner objects to the drawings under 37 CFR 1.83(a), the Examiner states that "[t]he drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s)."

Applicants respectfully submit that the drawings do show every feature of the invention specified in the claims. The features of claim 16, specifically "the multiple property fastener is engageable into the back waist region of the article" (emphasis added), is shown in the figures. Specifically, in Fig. 3 the back waist region is shown and is labeled as "24". Moreover, Applicants respectfully submit that Figs. 1, 2, 3, 6, 7 and 8 depict elements ascertainable to one of ordinary skill in the art as the back waist region of the article. Further, "engageable" is a property of the features shown, specifically, a property of the back waist region and the multiple property fastener. Accordingly, the objection to the drawings under 37 CFR 1.83(a) is obviated and should be withdrawn.

#### **2. Response to Paragraph 4 of the Office Action mailed September 2, 2005**

In the Office Action mailed September 2, 2005, the Examiner objects to the Abstract of the disclosure because the abstracts "includes grammatical errors on lines 1-4. Applicants have amended the Abstract herein. Applicants submit that no new matter has been added by way of these amendments.

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Accordingly, the objection to the Abstract of the disclosure stated in Paragraph 5 is obviated and should be withdrawn.

### **3. Response to Paragraph 5 of the Office Action mailed September 2, 2005**

In the Office Action mailed November 19, 2003, the Examiner objects to the disclosure because of three informalities.

1. The Examiner states, "[i]n the 1-17-05 amendment to page 10, line 13, lines 5 and 10 are grammatically incorrect. Applicants have amended the disclosure to address this objection.
2. The Examiner states, "[i]n the amendment to page 32, line 17, line 9 '79' should be --79--. Applicants have amended the disclosure to address this objection.
3. The Examiner states, "[t]he description would be in better form if the side edges which the component 66 extends beyond are described as those of the chassis or combination of elements 28, 42 and 44 not those of the entire diaper or article 20. Applicants appreciate the Examiner suggestions; however Applicants prefer the description in its current form. Applicants request that the objection be withdrawn. Alternatively, the Applicants would request the Examiner point out explicitly how and where the description should be amended.

Applicants submit that the amendments described herein merely clarify the disclosure as filed and that no new matter has been added by way of these amendments. Accordingly, the objections to the disclosure stated in Paragraph 5 are obviated and should be withdrawn.

### **4. Rejection under 35 U.S.C. §112, second paragraph (Paragraph 6 of the Office Action mailed September 2, 2005)**

In the Office Action mailed September 2, 2005, the Examiner rejects claims 2, 9, 10, 15 – 17 and 22 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Further, the Examiner states:

In regard to claim 22, are the fastener area and the at least two zones of the first and second zones of fastening material one and the same, i.e. how many fastener areas at a minimum are there? Two, i.e. the first zone and the second zone?  
Three, i.e. the first zone, the second zone and the fastener area?

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Claim 22 reads in part

a multiple property fastener attached in one of the front waist region and the back waist region, the multiple property fastener defining a fastener longitudinal direction, a fastener lateral direction and a fastener area, the multiple property fastener further comprising at least two zones, at least one engagement zone of a first mechanical fastening material and at least one non-abrasive zone of a second mechanical fastening material wherein the first mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus greater than about 30 kilopounds per square inch and the second mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus between about 7 kilopounds per square inch and about 30 kilopounds per square inch.  
(emphasis added)

As set forth in MPEP 2173.05(a), definiteness of claim language must be analyzed, not in a vacuum, but in light of

- (a) The content of the particular application disclosure;
- (b) The teachings of the prior art; and
- (c) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Utilizing the proper analysis, Applicants assert that one skilled in the art could reasonably ascertain, particularly and distinctly, what is claimed, specifically that the multiple property fastener defines a fastener area, and that the multiple property fastener comprises at least two zones. Applicants believe the claims read in light of the specification, particularly point out and distinctly claim the subject matter of the invention. Therefore, Applicants believe claims 2, 9, 10, 15 – 17 and 22 particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. For these reasons, Applicants respectfully request that the Examiner withdraw the rejection of claims 2, 9, 10, 15 – 17 and 22.

**5. Claim Language Interpretation (Paragraph 7 of the Office Action mailed September 2, 2005)**

In the Office Action mailed September 2, 2005, the Examiner believes that "disposable" is defined as set forth on page 11, lines 19 – 21. Applicants agree that "disposable" is defined as set forth on page 11, lines 19 – 21.

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The Examiner believes that "prefastened", is considered as configured when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, but does not require forming of such configuration during the manufacturing process. Applicants respectfully disagree. Applicants assert that the articles of the invention are formed in a pant-like configuration during the manufacturing process. Prefastened articles are described throughout the specification; for example:

Page 2, lines 3 – 6:

Conventional diapers are not provided in a "prefastened" condition...

Page 2, lines 15 – 17:

...such conventional diapers are not provided in a pant-like, prefastened configuration and, thus, are not configured to be pulled up or down over the hips of the wearer when the fasteners are attached.

Page 11, lines 10 – 16:

The prefastened absorbent articles are also refastenable such that they can be secured to and removed directly from the waist of the wearer and easily inspected to determine if they have been soiled during use. As such, the pant-like, prefastened, disposable absorbent articles of the present invention can function in a similar manner to conventional training pants when left in the prefastened, pant-like configuration, or they can be unfastened prior to or during use to function in a refastenable manner similar to conventional diapers.

Page 29, lines 33 – 35:

The hook and tape fasteners provided on currently available diapers cannot simply be positioned in a front waist region 22 of a diaper to provide a pant-like, prefastened configuration. Conventional fasteners do not have the proper dimensions to provide a functional prefastened article.

Therefore the specification supports, for purposes of the present invention, that a "prefastened" article, is an article that is configured, when fasteners are attached, i.e. a pant-like configuration, to be pulled up or down over the hips of a wearer, i.e. prior to application to the wearer, and does require forming of such configuration during the manufacturing process.

The Examiner believes the terms "multiple property" and "non-abrasive" have not been specifically defined and therefore will be accorded their common, i.e. dictionary, definition. The Examiner believes that "multiple property" is defined as having more than one property, i.e. any property. One having skill in the art would recognize that the specification supports, for purposes of the present invention, that a "multiple property fastener" is a fastener that has multiple properties

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related to fastening, for example, the fastener may have the property of engagement and the property of non-abrasiveness. Specifically, page 4, lines 30 – 32 reads “[t]he multiple property fasteners of the invention provide multiple features such as reliable engagement and skin friendliness (or reduced abrasiveness) in a single fastener.”

The Examiner believes the term “non-abrasive” is defined as not “causing abrasion, harsh, rough”, not “to rub off or wear away by friction”. On page 4, lines 30 – 32, the specification reads, “[t]he multiple property fasteners of the invention provide multiple features such as reliable engagement and skin friendliness (or reduced abrasiveness) in a single fastener. Therefore, for purposes of the present invention, “non-abrasive” is defined as skin friendly.

With regard to the term “mechanical fastening material” the Examiner references page 9, lines 2 – 3, and page 22, lines 7 – 10. The specification reads at page 9, lines 2 – 3, “[i]n addition to using traditional hook and loop components, the multiple property fasteners could also be fabricated using adhesive or tape materials.” Page 9, lines 2 – 3, does not reference the term “mechanical fastening material.” The specification reads at page 22, lines 7 – 10, “[s]uitable fastening materials to provide the engageable portions of the multiple property fasteners 60 are well known to those skilled in the art and can include adhesive tape tab fasteners, hook and loop fasteners, mushroom fasteners, snaps, pins, belts and the like, and combinations thereof.” Page 22, lines 7 – 10, does not reference the term “mechanical fastening material.” The specification at page 5, lines 29 – 32 reads, “[t]he first mechanical fastening material is desirably selected to provide strong engagement with another surface. **When the mechanical fastening material is a hook-type material**, it is desirable to select a hook that provides strong engagement with a loop-type material” (emphasis added). Accordingly, the specification supports that the term “mechanical fastening material” should be accorded the common definition as is known in the art and include at least hook-type material.

**6. Rejection under 35 U.S.C. §102(b)/103(a) (Paragraph 9 of the Office Action mailed September 2, 2005)**

In the Office Action mailed September 2, 2005, the Examiner rejects claims 2, 9-10, 15-17 and 22 under 35 U.S.C. § 102(b) or in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,957,908 issued to Kline et al. (hereinafter “the Kline patent”) and thereby

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U.S. Patent No. 4,946,527 issued to Battrell (hereinafter "the Battrell patent"). This rejection is respectfully traversed.

The Examiner believes the Kline patent discloses a fastener which has a longitudinal direction, a lateral direction and multiple properties, i.e. different strengths and permeabilities, and thereby the Battrell patent has both the property of sheer stress resistance and peel force which can be different in various portions. The Examiner also believes the Kline patent discloses a fastener area, at least one engagement zone of a first mechanical fastening material and at least one engagement zone of a second mechanical fastening material (see, e.g., col. 23, lines 9-23 and col. 17, line 14 – col. 18, line 6). The Examiner further believes the Kline patent at col. 22, lines 9 – 12 discloses that the fasteners do not irritate the wearer's skin. The Examiner believes the Kline patent discloses all the claimed structure and function. The Examiner acknowledges that the Kline patent does not disclose the first and second materials having different specific ranges of flexure modulus. The Examiner believes that there is sufficient factual basis for one to conclude that the materials of the zones taught by the Kline patent inherently include the same flexure modulus as that claimed when tested similarly. Alternatively, the Examiner believes that it would have been obvious to one having ordinary skill in the art to employ a first material of the claimed flexure modulus and a second material of the claimed flexure modulus since it has been held that where the general conditions of a claim are disclosed discovering the optimum or workable ranges involves only routine skill in the art. The Examiner cites In re Aller in support of this position. With regard to claim 2, the Examiner references Fig. 7, col. 16, lines 30 – 62, col. 17, line 14 – col. 18, line 6, col. 18, lines 8-9 and col. 22, lines 17 – 19. The Examiner also believes the Kline patent discloses "the zone 253" or a portion thereof and an equal and adjacent portion of "zone 254" can include the "engaging component 202" and such "zone 253" or portions thereof and equal portion of "zone 254" define the fastener area. With regard to claim 9, the Examiner references col. 17, lines 62 – 63, and lines 32 – 37 of the Kline patent, and thereby col. 8, lines 40 – 41 of the Battrell patent. With regard to claim 10, the Examiner references col. 17, lines 32-37 of the Kline patent, and thereby col. 8, lines 30 – 56 of the Battrell patent. With regard to claim 15, the Examiner references Fig. 3 of the Kline patent. With regard to claim 16, the Examiner references col. 21, lines 5 – 16, Fig. 2, and col. 12, lines 26 – 29 of the Kline patent, and believes the Kline patent discloses the landing member would be identical to the fastener of claim 1, and thus would engage the engaging component of the rear waist region. With regard to claim 17, the Examiner references Figs. 2, 3 and 7 of the Kline patent.

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In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. The Kline patent relates to absorbent articles having elastomeric ear panels and a fastening system that provides the user with different options as to how the diapers will be fitted to the wearer. (See col. 1, lines 5-11). The Kline patent does not disclose each and every element of the claimed invention.

Independent claim 22 of the present invention is directed to a pant-like, prefastened, disposable absorbent article that includes an absorbent, a front waist region, a back waist region, a crotch region that extends between and connects the waist regions. The claimed absorbent article also includes a longitudinal direction, a lateral direction, an exterior surface, an interior surface opposite the exterior surface, a pair of laterally opposed side edges and a pair of longitudinally opposed waist edges. The absorbent article further includes a multiple property fastener attached in one of the front waist region and the back waist region. The multiple property fastener defines a fastener longitudinal direction, a fastener lateral direction and a fastener area. The multiple property fastener includes at least two zones: one engagement zone of a first mechanical fastening material and one non-abrasive zone of a second mechanical fastening material. Further the first mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus greater than about 30 kilopounds per square inch and the second mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus between about 7 kilopounds per square inch and about 30 kilopounds per square inch.

The Kline patent does not disclose (either explicitly or implicitly) each and every element of the claimed invention. For example, the Kline patent does not disclose an article including a multiple property fastener including two mechanical fastening materials where the first mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus greater than about 30 kilopounds per square inch and the second mechanical fastening material is comprised of a polymeric material selected to have a flexural modulus between about 7 kilopounds per square inch and about 30 kilopounds per square inch.

The Examiner believes that there is sufficient factual basis for one to conclude that the materials of the zones taught by the Kline patent inherently include the same flexure modulus as that claimed when tested similarly.

The Examiner is making an inherency argument. MPEP 2112.01 states that "[w]here the claimed and prior art products are identical or substantially identical in structure ... a *prima facie* cases of

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either anticipation or obviousness has been established" (emphasis added). The Kline patent and the claimed structure are not identical or substantially identical in structure. The Kline patent does not disclose a first mechanical fastening material that is comprised of a polymeric material selected to have a flexural modulus greater than about 30 kilopounds per square inch and a second mechanical fastening material that is comprised of a polymeric material selected to have a flexural modulus between about 7 kilopounds per square inch and about 30 kilopounds per square inch. The Examiner has not pointed out where in the Kline patent a first fastener material comprising a first polymeric material is disclosed and a second fastener material comprising a second polymeric material is disclosed. Thus, the premise on which the inherency argument is based is incorrect. For at least this reason, Claim 22 is not anticipated by the Kline patent and the anticipation rejection should be withdrawn.

The Examiner alternatively believes that it would have been obvious to one having ordinary skill in the art to employ a first material of the claimed flexure modulus and a second material of the claimed flexure modulus since it has been held that where the general conditions of a claim are disclosed discovering the optimum or workable ranges involves only routine skill in the art.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. With respect to the first aspect of *prima facie* obviousness, there is no suggestion or motivation to modify the Kline patent to arrive at the claimed invention. By virtue of her citation of In re Aller, Applicants believe that the Examiner is relying on Section 2144.05 of the MPEP for this portion of the rejection. If this is the case, Applicants respectfully disagree with the Examiner's reliance on this section; section 2144.05 of the MPEP is directed to the "Obviousness of Ranges" or "Optimization of Ranges." The general condition of Independent Claim 22 are not disclosed by the prior art because the Kline patent does not disclose such values at all. Additionally, In re Antonie, holds that a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). The Examiner has not shown where the Kline patent discloses the flexural modulus for a polymeric material of a fastener material is a result-effective variable of the Kline patent disclosure. The Examiner has not established a *prima facie* case of



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obviousness because she has not identified the necessary motivation to modify the Kline patent to arrive at the claimed invention.

For at least these reasons, Applicants respectfully submit that Claim 22 is patentable over the Kline patent and that the obviousness rejection should be withdrawn. Likewise, Applicants respectfully submit that Claims 2, 9, 10 and 15-17 which depend from Independent Claim 22 are patentable over the Kline patent for at least the reasons stated above.

Based on the foregoing, Applicants respectfully request that the rejections under 35 U.S.C. §§102(b) and 103(a) be withdrawn.

#### **7. Prior Art Made of Record and Not Relied Upon**

Applicants have reviewed the references cited by the Examiner but not relied upon in rejecting the claims. However, Applicants assert the cited references fail to teach or suggest the invention recited in the claims. Accordingly, claims 2, 9, 10, 15-17 and 22 are patentable over such references.

In conclusion, and in view of the amendments and remarks, reconsideration and withdrawal of the Examiner's rejection of claims 2, 9, 10, 15-17 and 22 under 35 U.S.C. §§ 102(b) and 103(a) is respectfully requested. Further, in view of the amendments and remarks, reconsideration and withdrawal of the Examiner's rejection of claims 2, 9, 10, 15 – 17 and 22 under 35 U.S.C. §112 2<sup>nd</sup> paragraph is respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4558.

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The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558.

Respectfully submitted,  
PAUL J. DATTA ET AL.

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#### CERTIFICATE OF FACSIMILE

I, Mary L. Roberts, hereby certify that on December 22, 2005, this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

By: 

Mary L. Roberts